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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF OREGON
9 PORTLAND DIVISION
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11 TRUSTEES OF THE SERVICE
12 EMPLOYEES INTERNATIONAL UNION
13 LOCAL 49 WELFARE TRUST,

No. 3:11-cv-01302-HU

FINDINGS AND
RECOMMENDATION

14 Plaintiff,

15 v.

16 COAST INDUSTRIES, INC.,
dba Coast Janitorial Services,

17 Defendant.
18

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27 Of Attorneys for Plaintiff
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1 **HUBEL, J.,**

2 On April 13, 2012, Plaintiff filed this action pursuant to the
3 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001
4 et seq., and the Labor Management Relations Act of 1947, 29 U.S.C.
5 § 141 et seq., seeking to recover unpaid contributions to the
6 Service Employees International Union 49 Welfare Trust
7 (hereinafter, "the Fund").

8 Bernadette Artharee ("Artharee"), registered agent and owner
9 of defendant Coast Industries, Inc. ("Defendant"), was served
10 personally on November 3, 2011. (Docket No. 3 at 3.) Artharee
11 failed to move or plead in response to Plaintiff's Complaint, or
12 the First Amended Complaint which was filed and served on April 13
13 and May 23, 2012, respectively. As a result, the undersigned
14 entered a Default Order on June 14, 2012. (Docket No. 22.)
15 Plaintiff now moves for default judgment against Defendant. (Docket
16 No. 23.)

17 The present action deals with the time period February 2011
18 through November 2011 (the "time period at issue"). At all times
19 material to this lawsuit, Defendant was a signatory to a collective
20 bargaining agreement ("CBA") in which it agreed to pay fringe
21 benefits to the Fund on behalf of its employees that performed work
22 covered by the CBA. Defendant also agreed to be bound the terms
23 and conditions of the Trust Agreement that created the Fund. The
24 Trust Agreement provides that, in the event a signatory fails to
25 pay its fringe benefit contributions by the date established by the
26 CBA (the 20th day of the month following the month in which work
27 covered by the CBA was performed), interest must be assessed on the
28 delinquent or late-paid fringe benefit contributions at the rate of

eight percent annum from the due date until it is paid. The Trust Agreement also requires payment of attorneys' fees and the assessment of liquidated damages in the amount of twenty percent of the delinquent or late-paid fringe benefit contributions.

According to Plaintiff's counsel, Cary Cadonau ("Cardonau"), his firm calculated the liquidated damages and interest owed by Defendant for the period at issue utilizing the rates set forth above. Based on those calculations, and the chart provided below which details the dates Defendant's payments were received, Plaintiff requests that judgment be entered against Defendant for \$98.67 in interest and \$950.86¹ in liquidated damages.

Month/Year	Due Date	Date Paid	Benefits
Feb. 2011	3/20/2011	3/30/2012	\$453.68
Mar. 2011	4/20/2011	7/18/2011	\$453.68
Apr. 2011	5/20/2011	7/18/2011	\$453.68
May 2011	6/20/2011	7/18/2011	\$453.68
June 2011	7/20/2011	10/30/2011	\$489.94
July 2011	8/20/2011	10/30/2011	\$490.06
Aug. 2011	9/20/2011	10/31/2011	\$489.94
Sept. 2011	10/20/2011	10/31/2011	\$490.04
Oct. 2011	11/20/2011	2/23/2012	\$489.94
Nov. 2011	12/20/2011	2/13/2012	\$489.94

Plaintiff also requests that judgment be entered against Defendant for \$2,782.50 in attorneys' fees (13.25 hours x \$210 per

¹ 20 % of the sum of the benefits column in the table below.

1 hour) and \$433.75 in court costs incurred herein (\$350 filing fee;
2 \$64.75 in service costs; and a \$20 prevailing party fee). The
3 Court finds these amounts to be reasonable and proper in light of
4 the services performed and results obtained in this action.
5

6 I therefore recommend Plaintiff's motion (Docket No. 23) for
7 default judgment be **GRANTED**, as follows: (1) Defendant should be
8 ordered to pay \$98.67 in interest and \$950.86 in liquidated damages
9 based on its failure to make timely fringe benefit contributions to
10 the Fund; and (2) Defendant should be ordered to pay attorney's
11 fees in the amount of \$2,782.50 and costs in the amount of \$433.75.
12

13 ***SCHEDULING ORDER***

14 The Findings and Recommendation will be referred to a district
15 judge. Objections, if any, are due **November 13, 2012**. If no
16 objections are filed, then the Findings and Recommendation will go
17 under advisement on that date. If objections are filed, then a
18 response is due **December 4, 2012**. When the response is due or
19 filed, whichever date is earlier, the Findings and Recommendation
20 will go under advisement.
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22 Dated this 25th day of October, 2012.

23 /s/ Dennis J. Hubel

24 _____
DENNIS J. HUBEL

25 United States Magistrate Judge
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